

To: Environmental Advisory Council  
Re: MDEQ Use of Guidance Documents  
From: Brian Kandler, Director, Government Relations  
Date: 9/17/2008

The Detroit Regional Chamber represents over 20,000 businesses in the 10-county Southeast Michigan area. Our members range from sole proprietors to Fortune 500 companies and every size in between.

As set forth in prior correspondence and discussions, the Detroit Regional Chamber believes that the pace of cleanup and redevelopment in the State of Michigan is unacceptably low. Remedial decision-making processes within DEQ must be reformed to provide a transparent and readily comprehensible path to site closure and brownfield redevelopment.

The Detroit Chamber of Commerce believes that Op Memos and other forms of guidance ought to be used only to enhance the degree of transparency and predictability for both the regulated community as well as other MDEQ staff. If, in any case, the issuance of a guidance document or Op Memo reduces the transparency or predictability in the process, then it shouldn't be issued. Rather than relying on an increasing volume of Op Memos, risk management principles can and should be used to address uncertainty to assure that risk reduction goals are met. Risk management, by definition, requires application of prudent judgment by front line staff to distinguish significant risk from de minimus risk.

Parties are often told by the agency that they are not in compliance with policies found in one or more Operational Memoranda (Op Memos), which often are in draft form, and are revised throughout the course of a project's development and review. These issues are often raised for the first time by Lansing staff during the latter stages of RAP review after district review and approval, further complicating the process. Such processes create a lack of clarity and predictability for all involved, (both the regulator and regulated party), and frustrate the potential for a linear path to compliance and redevelopment.

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Considering that the regulated community can get completely different interpretations on the same issue in the space of just a few months from the same MDEQ staff, this lack of transparency and predictability in the program creates large entry barriers to parties who might otherwise be predisposed to move a site through a remedial response process toward closure and/or redevelopment.

Our position is that guidance documents represent only one aspect of a larger need for reform within the Part 201 program. A lack of clarity in the decision-making processes presents uncertainty, for both those who wish to clean up and redevelop properties, as well as MDEQ staff. While there can be tax incentives for brownfield redevelopment, the lengthy and uncertain prospect of navigating the Part 201 program has resulted in stagnation of clean up and redevelopment activity, particularly in urban core communities. We are anxious to resume discussions on programmatic reform before Michigan's innovative approach to remediation and redevelopment becomes obsolete or incapable of attracting the necessary interest and investment.

The Detroit Regional Chamber asks that MDEQ implement the policy changes agreed to in the Director's May 19, 2008 letter to increase the pace and efficiency of clean up activities and facilitate brownfield redevelopment. This includes implementing a risk management approach with an emphasis that leads to more remediated sites for which DEQ would indicate intent to close further agency action. The DEQ also should develop a set of metrics by which to measure the progress of the program. These metrics must measure real progress toward the overall objectives of Part 201 (overall risk reduction and enhanced brownfield redevelopment). By providing transparent more predictable decision-making processes, clean up activities will increase throughout the state, resulting in more site closures, a cleaner environment and the revitalization of Michigan's urban core.